



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FORREST FREEZE)
TRUCKING, INC.)

Appearances:

For Appellant: Elaine Freeze
Secretary - Treasurer

For Respondent: James C. Stewart
Counsel

OPINION

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Forrest Freeze Trucking, Inc. , against a proposed assessment of additional franchise tax in the amount of \$925.92 for the income and taxable year 1970. After this appeal respondent reduced the tax deficiency to \$446.81, and appellant paid this amount. Therefore, pursuant to section 26078 of the Revenue and Taxation Code, this appeal is treated as an appeal from the denial of a refund claim in the latter sum.

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The issue presented is whether appellant was properly taxed as a commencing corporation upon its revival after its suspension.

Appellant was incorporated in California on September 26, 1966. It did not notify respondent Franchise Tax Board of its annual accounting period within the time prescribed by section 23301.5 of the Revenue and Taxation Code and was suspended on August 29, 1967. ^{1/} Appellant was revived (i. e. , relieved from the suspension) after payment of the minimum tax, plus penalties and interest, and after the adoption of a calendar year accounting period.

Appellant commenced doing business in January of 1968 but did not file a return and prepay a minimum tax for 1968 by March 15, 1968. Therefore, respondent determined that appellant was delinquent. When the delinquency continued, there apparently were grounds for suspension pursuant to section 23301 of the Revenue and Taxation Code. On August 1, 1969, according to respondent, it mailed a demand for payment of the minimum tax. When payment had not been received by October 1, 1969, respondent notified the Secretary of State and appellant's corporate powers were thereby again suspended, in accordance with section 23302 of the Revenue and Taxation Code. Appellant was revived on October 1, 1970, when it paid the minimum tax for 1968, plus penalties and interest. (See Rev. & Tax. Code, § 23305.)

Subsequently, respondent determined on the basis of section 23282 of the Revenue and Taxation Code that appellant was

^{1/} During 1967 section 23301.5 provided that a domestic corporation 'could be suspended if it failed to file a return; or notify the Franchise Tax Board of its annual accounting period, within nine months after the date of its incorporation.

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subject to the commencing corporation provisions. ^{2/} Consequently, respondent measured appellant's tax liability for the taxable year 1970 on the basis of its net income for that year. (See Rev. & Tax. Code, § 23222.) Appellant unsuccessfully protested respondent's action and this appeal followed. Subsequent to the filing of the appeal, respondent reduced the proposed assessment to reflect a credit for taxes appellant had paid for the taxable year 1970 based on the net income for 1969.

We understand that appellant does not now dispute that section 23282 ordinarily requires a corporation which is suspended in one taxable year and revived in another to be treated as if it were a commencing corporation in the year of revival. Nor does it claim that it was not delinquent, or that the suspension was improper. It appears that appellant's sole contention on appeal is that it did not receive notice of its delinquent status or of its suspension and, consequently, it urges that it was unfairly deprived of the opportunity to avoid the additional tax liability imposed by section 23282.

Respondent contends that the law does not require the giving of notice with respect to the delinquency or suspension. In any event respondent maintains that pursuant to its consistent administrative practice, it sent a demand for payment of the delinquency and allowed 60 days for payment. Thereafter, respondent allegedly sent appellant a copy of the suspension notice. Respondent contends that both notices were mailed to the correct address. It states that the envelopes were imprinted with respondent's return address but neither was returned.

Based upon the facts presented to us, we conclude that the tax deficiency was properly imposed against appellant' whether or not the notices were actually mailed or received. Under

^{2/} Section 23282 subdivision (a), provides, in part, that the tax imposed upon any taxpayer which has suffered the suspension provided in Section 23301, and which revives in any taxable year other than the taxable year in which suspension or forfeiture' occurred, shall be computed in the same manner as provided in Sections 23222 to 23224, inclusive, relative to the computation of taxes upon taxpayers commencing to do business for the first time after incorporation.

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section 23302, the suspension was effective when appellant's name was filed with the Secretary of State. This was true whether or not appellant actually received notice of the suspension. (Appeal of Western Miracle Water Softener, Inc., Cal. St. Bd. of Equal., Oct. 13 1959.) Because of respondent's previous action concerning the year 1967, appellant should have realized that its failure to file a return and pay the minimum tax could result in another suspension.

In view of the aforementioned considerations, we conclude that respondent's action must be sustained.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying the claim of Forrest Freeze Trucking, Inc., for refund of franchise tax in the amount of \$446.81 for the income and taxable year 1970, be and the same is hereby modified to reflect the adjustment made by the Franchise Tax Board. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 2nd day of February, 1976, by the State Board of Equalization.

William K. Boyd, Chairman
George E. Perry, Member
Paul H. Hori, Member
_____, Member
_____, Member

ATTEST? W. W. Davelos Secretary